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NO. _____

SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM, 1983

JIMMIE ALEXANDER,

PETITIONER,

vs.

LOS ANGELES COUNTY and
LOS ANGELES COUNTY CIVIL
SERVICE COMMISSION,

DEFENDANTS-APPELLEES.

PETITION FOR A WRIT OF CERTIORARI TO THE NINTH CIRCUIT COURT OF APPEALS

JIMMIE ALEXANDER
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Los Angeles, California 90011
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IN PROPRIA PERSONA

J. GALLAGHER - Printed Briefs (714)685-3637

95 pp

QUESTIONS PRESENTED

I

Whether the Court was in error when it stated Plaintiff was precluded from litigating this case due to collateral estoppel.

CERTIFICATION AS TO INTERESTED PARTIES

The undersigned Petitioner certifies that the following listed parties have an interest in the outcome of this case. These representatives are made to enable justices of the Court to evaluate possible disqualifications or reclusal.

There are no other interested parties other than those named in the caption of this case and their attorneys of record.

by_____

Jimmie Alexander

In Propria Persona

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IN THE

SUPREME COURT OF THE UNITED STATES

JIMMIE ALEXANDER,

Plaintiff-Appellant,

v.

LOS ANGELES COUNTY and
LOS ANGELES COUNTY CIVIL
SERVICE COMMISSION,

Defendants-Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE NINTH CIRCUIT COURT OF APPEALS

Petitioner hereby prays for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit as to Petitioner, entered on February 10, 1984, and the Court's denial of reconsideration entered on February 10, 1984.

JURISDICTION

Plaintiff was terminated under Section 33 of the Administrative Code. (A code enacted to prevent strikes). This termination violated this Plaintiff's Fifth and Fourteenth Amendment of the U. S. Constitution, deprived this plaintiff of property rights, vested rights and due process rights without a hearing. This wrongful termination is also in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et. seq. Note: No Court has ruled on the constitutionality of Section 33 of the Administrative Code.

The State courts acting within its proper jurisdiction has not given this litigant a full and fair opportunity to litigate a federal claim and has not shown itself willing and able to protect federal rights or even acknowledge they exist. Plaintiff has been deprived of rights secured by the "Constitution and laws" of the United States. The defendant deprived plaintiff of my rights under the color of county Ordinance and Racism.

The Ninth Circuit Court of Appeals decision is in conflict with rules of the Supreme Court, Rule 17 (C) when state courts or a federal court of appeals has decided an important question of federal law which has not been settled by this court, or has decided a federal question in a way in conflict with applicable decision of this court. (Note: This plaintiff cited cases where the U.S. Supreme Court states Collateral Estoppel cannot be used as a defense when the litigant has not had a fair and full opportunity to litigate).

After this plaintiff failed to receive justice in the California state courts, I filed a complaint in the Federal Court July 30, 1982. The District judge dismissed the case on October 12, 1982 based on collateral estoppel.

The notice of appeal was filed with the U.S. Ninth Circuit November 10, 1982. The Court of Appeals affirmed the District Court on November 3, 1983, Note used "MEMORANDUM".

Plaintiff timely filed for a rehearing en banc and this was denied by majority of the panel, this order was filed on February 10, 1984.

When the court affirmed the District Court decision the decision was unanimous. The panel was not unanimous when they denied plaintiff's petition for rehearing, therefore I think you can safely say one panel member read the information and felt that injustice had been done, this litigant had not had a full and fair opportunity to litigate.

The Constitution and the laws of the land are supposed to be color blind. You do not have to be a judge or a lawyer

to realize that if this litigant had been white this case never would have gone to court. This country has been waving the flag stating this is the home of the free, and there is freedom and justice for all, it is time we should practice what we preach.

The defendant's attorneys are assuming the courts are going to let them get away with miscarriage of justice. So far the courts have looked the other way, they do not seem to be offended by the "Big Lie".

It is Plaintiff's contention that the defendant's attorneys, John H. Larson, William F. Stewart, Joe Ben Hudgens and Halvor S. Melom should not be allowed to practice before any federal court because they deliberately lied to the courts including the U.S. Supreme Court. (Exhibits prove this). The defendant's attorneys are in violation of Supreme Court Rule 8, conduct unbecoming a member of the Bar of this court.

The Supreme Court has jurisdiction under Title 28 U.S.C. Sec. 1254 (1), etc.

The Los Angeles County Custodian of medical records states they operate under the Privacy Act of 1974 (88 Stat. 1986; U.S.C. 552 (a) as amended. She states no medical records are ever sent to the personnel officer.

Where state procedural law was inadequate to allow full litigation of a constitutional claim and where state procedural law, though adequate in theory was inadequate in practice, 365 U.S., at 173-174.

Federal courts could step in where the state courts were unable or unwilling to protect federal rights.

The Court is in error when they state Plaintiff is precluded from litigating this case due to collateral estoppel.

On or about July 5, 1977, Appellant/Plaintiff JIMMIE ALEXANDER, pursuant to the Assessor's Department Handbook No. 5207-1-3, notified the Supervising Control Clerk, FE FENDENCIA, of Regional Office No. 9, by telephone that he was unable to return to work as of the same day because of a stomach illness.

On July 15, 1977, the Personnel Officer, ALFRED F. MUIR, acknowledged in the letter dated July 15, 1977, requested a physician's certificate to be mailed to the Director, Occupational Health Servict . .pursuant to Section 78.07 of the Administrative Code.

On August 25, 2977, the Personnel Officer, ALFRED MUIR, mailed another certified letter notifying the petitioner that (1) from August 24, 1977 he would be carried on the payroll as absent without pay, and (2) sick leave would not be applied until receipt of medical verification of illness, citing Section 78.07 of the Administrative Code.

On August 29, 1977, the petitioner requested the physician's certificate from his physician, BARBARA REVE, M. D., at Kaiser Hospital, and mailed the physician's certificate by certified mail to the Occupational Health Service. The physician's certificate dated August 29, 1977, attached hereto as EXHIBIT "E" and incorporated herein in fully, was received and acknowledged by the Occupational Health Service on September 6, 1977.

On the following day, August 30, 1977, the Personnel Officer, ALFRED E. MUIR, again sent a certified letter to MR. ALEXANDER, stating, "If you do not provide us with a medical verifiction of your absence by Tuesday, September 6, 1977, you will be deemed to have resigned your position. If for any reason you cannot provide us with medical verification, you must obtain official authorization to be absent."

Petitioner requests the Court to take judicial notice that September 5, 1977, was Labor Day and recognized as a Federal and State holiday; therefore, no mails were delivered or received on that day.

On September 6, 1977, ALFRED H. MUIR notified the petitioner that he was deemed to have resigned from the County under Section 33 of the Administrative Code of the County of Los Angeles because he did not submit the requested medical verification of his absence.

The petitioner, prior to the Personnel Officer's letter of August 30, 1977, had fully complied with the Department's Handbook Policies and Regulations by giving notice of illness on July 5, 1977, and submitting a physician's certificate with verification of his illness personally on August 29, 1977. Said verification was received on or before September 6, 1977.

On September 6, 1977, the Los Angeles County Department of Real Property Appraisals, through the Personnel Officer, ALFRED F. MUIR, unconstitutionally, in violation of California Government Code 19500, Note 5 of the 1978 Supplement, and the Civil Service Rules and Regu-

lations, applied the Los Angeles County Administrative Code, Section 33, and deprived the petitioner of the property rights in the continuation of his employment and the vested interest in his retirement benefits and board hearing under California Government Codes 31721, 31723, 31724l and 31725, in violation of the 1937 Retirement Act.

Pursuant to Civil Service Commission Rules 5.02, and in compliance with the Director of Personnel MARTIN GOLD's letter of October 20, 1977, to request Civil Service Hearing within 20 days, the petitioner, through his legal representative on October 31, 1977, requested a hearing.

On December 21, 1977, the Civil Service Commission had its meeting, resulting in the following undisputed facts.

The Civil Service Commission, through Commissioner FRANK A. WORK, suggested that without prejudice the petitioner should request reinstatement to prevent additional cost to the taxpayers in a Superior Court litigation.

The petitioner withdrew his petition on the same date. On December 17, 1977, pursuant to the Civil Service Commission's request, the petitioner requested reinstatement.

On January 16, 1978, the Director of Real Property Appraisals acknowledged his compliance with Section 78.07 of the Administrative Code and requested the answer to six (6) interrogatories before giving an unequivocal answer to the request for reinstatement.

On January 22, 1978, the January 16, 1978 letter was acknowledged with a request by petitioner's counsel for an unequivocal answer.

On January 31, 1978, the Director of Real Property Appraisal notified the petitioner of an unequivocal rejection.

On February 10, 1978, the petitioner, through his legal representative, requested a re-set of his request for a Civil Service Hearing under Rule Civil Service Commission S.20.

On April 27, 1978, MR. ROBERT HARTSTEIN from the Office of the County of Los Angeles, under the direction of HARRY L. HUFFORD, Director of Personnel, submitted, via telephone, to the petitioner's attorney, CHARLES C. GUIDRY, the offer of a proposed reconsideration of MR. ALEXANDER's circumstances of separation from services which was the basis of MR. ALEXANDER's appeal. The basis of the offer was "contingent upon and as soon as Mr. Alexander files all necessary papers to initiate a disability retirement, the department will (1) reinstate Mr. Alexander for the purpose of drawing all benefits to which he would have been entitled had he not been separated from service and (2) the reinstatement is understood not to be for the purpose of Mr. Alexander eventually returning to active service in the department." The said offer for "contingent reinstatement" was in violation of the California Government Code, Section 19500, in that it attempted to negotiate one vested right of continuing employment against the vested right of retirement in violation of the Retirement Act of 1937, absent

the adequate safeguard due process hearing requirement of Article 10, Section 31721 to 31725 of the California Government Code.

The offer was rejected in its entirety on May 15, 1978. A copy of the May 15, 1978 letter is attached hereto as EXHIBIT "Q" and incorporated herein in full.

On June 21, 1978, at its meeting and after review of written materials submitted, the Civil Service Commission denied the request of JIMMIE ALEXANDER for a hearing on the decision of the Director of Personnel to deny the petitioner's appeal. Commissioner FRANK A. WORK stated, "We have had the question for a long time whether or not a layoff was, in fact, the same as a discharge. I can't think of a better case to send to the Superior Court."

The petitioner has exhausted the available administrative remedies provided to him under the rules of the Los Angeles County Civil Service Commission.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether Section 33 of Ordinance No. 9801, pursuant to which Appellant was terminated, is constitutional.

Whether the Superior Court erred in not finding an abuse of discretion and power in the act of the Civil Service Commission, which denied the request of Appellant herein, a 17-year Civil Service employee, for a hearing based on the decision of the Los Angeles County Director of Personnel that Appellant's absence from his position as

Real Estate Appraiser from July 5, 1977 to September 6, 1977, were not for medical beyond my control.

Whether the failure of the Director of Personnel to give Appellant notice of the charges and allow Appellant a hearing before dismissing Appellant constituted a denial of procedure of due process and resulted in an invalid discharge.

Whether the Administrative decision affecting the legitimately acquired or vested right of employment after 17 years of service was too important to the individual's life to regulate it to exclusive Administrative extinction without according that individual a hearing and the right to face and question the Appellant's accuser and a full independent judicial review of necessary.

Whether the Appellant's case was within the intended class of the **Baker v. Wadsworth** doctrine.

The County Assessor personnel officer is also guilty of discrimination under Title VII of the E.E.O.C.

The Superior Court (Judge Dell) and the Appellate Department (Court of Appeal) used the County Counsel reply briefs as substantial evidence and failing to exercise its independent judicial review power of the County Assessor personnel officer and the Civil Service Commission.

Section 33 of the Administrative Code is unconstitutional on its face or as applied to Appellant; denied Appellant due process. The Court should declare this Code unconstitutional.

The Trial Court erred in finding the Civil Service Commission did not abuse its discretion when they denied Appellant a hearing.

Section 33 of the Administrative Code deprives an employee of a reasonable opportunity to be heard, as guaranteed by the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution. An employee's right to a hearing is a fundamental right, particularly when a property right is involved. It derives from constitutional guarantee that property not be taken without due process.

Appellant is contending that his termination was due to fraud, undue influence, and discrimination by a racist.

Personnel officer and the Civil Service Commission violated the Eighth Amendmend of cruel and unusual punishment imposed without due process.

When statutes delegate power with inadequate protection against unfairness or favoritism, and when such protection can easily be provided, the reviewing court may well insist upon such protection or invalidate the administrative Code or Legislation.

Plaintiff/Appellant's termination was a wrongful discharge.

Plaintiff/Appellant's termination was due to Racism.

County Counsel HARVAR S. MELOM and JOHN H. LARSON knowlingly lied to the Courts, including the United States Supreme Court, and violated Rules of Professional Conduct Rule 7-105.

Abuse of power and discretion by Los Angeles County Civil Service Commission.

Termination was due to extrinsic fraud.

Plaintiff/Appellant has exhibits attached to Complaint to prove that termiantion was due to Racism and abuse of power and discretion.

U.S. District Judge Kenyon refused plaintiff's request for the Finding of Facts and Conclusions of Law. (SEE C.R. No. 9). Plaintiff/Appellant thinks the Court is in error when it refused the request for the Finding of Facts and Conclusions of Law.

The Finding of the District Court should be sufficiently clear so that the Findings can be examined in the light of evidence in the record and applicable principles.

id; **Corley v. Jackson Police Dept.**
566 2d 994, 1000; & N.8 (5th CIR. 1978)

ARGUMENT

Plaintiff differs with the Court's Order when the Court said that plaintiff is collaterally estopped from contending that plaintiff was terminated because of racism in violation of Title VII of Civil Rights Act of 1964; U.S.C. Section 2000, et seq., and Section 33 of the Los Angeles County Administrative Code is unconstitutional because it does not provide a hearing as a matter of right in violation of Appellant's due process rights.

> COLLATERAL ESTOPPEL is not intended to prevent a person from litigating in the Federal court when the litigant has not had a "full and fair opportunity" to litigate that issue in the earlier case.

Montana v. United States, supra at 153;
Blonder-Tongue Laboratories, Inc. vs. University of Illinois Foundation, supra, at 328-329.
Montana, et al. v. United States, 440-, 147-164.
Brown v. Felson (1979) 442 U.S. 127, 131; 60 L Ed 2d 767; 99 S. Ct. 2205.
Allen v. McCurry (1980) 66 L Ed 2d 308; 101 S. Ct. 441.

This plaintiff has documents to prove that he has not had a "full and fair opportunity" to litigate the issues in the learlier case. A person cannot receive a "full and fair opportunity" to litigate when the judgment was based on fraud, undue means, racism, violation of the Codes of Judicial Conduct, violation of rules of professional conduct C.R.C. Rule 7-105, and ex parte hearing in Judge Dell's court (Judgment granted in Judge Dell's court).

Plaintiff has documents to prove that County Counsel John H. Larson (defendant's attorney) and Halvor S. Melom lied to the Civil Service Commission and the Courts to obtain approval for the wrongful discharge; no proof was required by the Civil Service Commission or Judge Dell that due process rights had been adhered to.

The Federal Court should disqualify John H. Larson and Halvor S. Melom so that they cannot appear in Federal courts, because they lied to the Federal courts, including the U.S. Supreme Court and the State courts.

The defendant's attorney stated the Complaint is barred under the Doctrine of Res Judicata. Note: Defendant's attorney did not rely on collateral estoppel when requesting the Complaint be dismissed; of course, the Court's order dismissed the case based on collateral estoppel.

Plaintiff is going to cite some excerpts from cases to prove that Res Judicata and./or collateral estoppel cannot legally preclude litigation or re-litigation in the Federal Courts (as applied to plaintiff's case).

The following are some excerpts from **Allen v. McCurry (1980) 66 L Ed 2d 308; 101 S. Ct. 441:**

Opinion of the Court

> But noting that Stone v. Powel, supra, barred McCurry from federal habeas corpus relief, and invoking "the special role of the federal courts in protecting Civil Rights", 505 F. 2d at 799, the courts concluded that Section 1983 suit was McCurry's only route to a federal forum for his constitutional claim and directed the trial court to allow him to proceed to trial unencumbered by collateral estoppel.
>
> Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a part to the first case.
>
> **Montana v. United States**, 440 U.S. 147, 153

> But one general limitation the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" to litigate that issue in the earlier case.
>
> **Montana v. U.S.** supra, at 153;
> **Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation**, at 328-329.

This plaintiff did not have a "full and fair opportunity" to litigate the issue and the question of the constitutionality of Section 33 of the Administrative Code.

Contrary to the suggestion of the dissent, post, at 112-113, our decision today does not fashion any new, more stringent doctrine of collateral estoppel, nor does it hold that collateral estoppel effect of a state court decision turns on the single factor of whether the State gave Federal claimant a "full and fair opportunity" to litigate a Federal question. (Note this plaintiff was not given a full and fair opportunity to litigate a federal question.) Our decision does not "fashion" any doctrine of collateral estoppel at all. Rather it construes Section 1983 to determine whether the conventional doctrine of collateral estoppel applies to the case at hand.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof the deprivation of any rights, privileges, or immunities

secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S. Section 1983

Section 33 of the Administrative Code violates plaintiff's property rights and due process rights. Fifth and Fourteenth Amendment violation.

> In reviewing the legislative history of . . .Section 1983 in **Monroe v. Pape**, supra, the Court inferred that Congress had intended a federal remedy in three circumstances: where state substantive law was facially unconstitutional, where the state procedure law was inadequate to allow full litigation of a constitutional claim, and state procedure law, though adequate in theory, was inadequate in practice. 365 . . ., at 173-174. In short, the federal courts could step in where the state courts were unable or unwilling to protect federal rights. [This statement represents what occurred in plaintiff's case]. Id at 176. This understanding of Section 1983 might well support an exception to res judicata and collater estoppel where state law did not provide fair procedure for the litigation of constitutional claims, or where the state court failed to even acknowledge the existence of the constitutional principle on which a litigant based his claim.

[The preceding statement represents what happened to plaintiff.]

The following are some excerpts from **Montana v. United States**, 440 U.S. 147-164 (1979):

> To determine the appropriate application of collateral estoppel in the instant case necessitates three further inquiries: first, whether the issues presented by this litigation are substantially the same as those resolved against the United States in kiewit 1; second, whether controlling facts or legal principles have changed significantly since the state-court judgment; and finally, whether other special circumstances warrant an exception to the normal rules of preclusion. (The court is in error in using collateral estoppel against plaintiff).
>
> It is of course true that changes in facts essential to a judgment will render collateral estoppel inapplicable in a subsequent action raising the same issues. See e. g. **United States v. Certain Land at Irving Place & 16th Street**, 415 F. 2d 265, 269; (CA2 1969);
>
> **Metcalf v. Commissioner**, 343 F.2d (CA 1 1965);
>
> **Alexander v. Commissioner**, 224 F.2d 788, 792-793 (CA5 1955).

[The lies that John H. Larson and Halvor S. Melom used to obtain the judgment in Judge Dell's Court can now be refuted by the Administrative Memorandum that is in plaintiff's possession; the memo is going to be included in the Affidavit.)

As we held in **England**, absention doctrine may not serve as a vehicle for depriving individual of an otherwise cognizable right to have federal courts make factual determination essential to the resolution of federal questions.

Id. at 417. See **NAACP v. Button**, 371 U.S. 415, 427 (1963).

[Plaintiff's case should be heard based on the merit of the case.]

Mr. Justice Rehnquist, concurring.

I join the Court's Opinion on the customary understanding that references to law review article and drafts or finally adopted version restatement of judgment are not intended to bind the Court views expressed therein on issues not presented by the facts of this case. (Note: The constitutionality of Section 33 of the Administrative Code, plaintiff states Section 33 of the Administrative Code is unconstitutional, because it violates the fundamental requisite of due process of law of the opportunity to be heard, to offer evidence, and to cross-examine adverse witnesses.)

Stolberg v. Caldwell, 423 F. Supp. 1295.

Cheeseman v. Carey, 485 F. Supp. 203.

Brown v. Felsen (1979) 442 U.S. 127; 131 . . .

60 L.Ed. 2d 767; 99 S. Ct. 2205.

Tenth Circuit, Decided June 4, 1979.

Case: The court held that the record in the state-

court proceeding did not establish that respondent had committed fraud, and res judicata barred petitioner from offering additional evidence to prove the underlying nature of the debt. The District Court and Court of Appeals affirmed.

[Fraud and undue means have been used against this plaintiff.]

The following are some excerpts from **Brown v. Felsen**:

Court's Opinion

> For the sake of repose, res judicata shields the fraud and the cheats as well as the honest person. It therefore is to be invoked only after careful inquiry.
>
> Refusing to apply res judicata here would permit the bankruptcy court to make an accurate determination whether respondent in fact committed the deceit, fraud, and malicious conversion which petitioner alleges.

The judgment in this plaintiff's case is tainted with undue means, fraud, deceit, malicious prosecution, malicious intent, racism, violation of due process rights and wrongful discharge.

To top the above off the defendant's attorney HALVOR S. MELOM asked U.S. District Judge DAVID V. KENYON to award him attorney fees, essentially for lying.

HALVOR S. MELOM undoubtedly was thinking the Court would stoop to the level of Superior Court Judge George M. Dell.

The Court in its order dismissing this case based on collateral estoppel stated plaintiff's reliance on **Skelly v. State Personnel Board**, 15 Cal.3rd 194 (1975), for the contention that Appellant was entitled to a hearing is misplaced. Appellant was not relying on the above case; rather, plaintiff was relying on Constitutional Law and the Truth. Plaintiff is going to attach some of the constitutional law cases cited. Plaintiff was terminated under Section 33 of the Administrative Code. (Note: this code was enacted to prevent strikes. The plaintiff was out on Sick Leave.)

Plaintiff is again attaching some administrative memo that will prove that plaintiff complied with the procedure when a person is out sick. The Administrative memos will also prove that defendant attorneys have been lying to the Courts. The judgment was granted due to a biased hearing in Judge Dell's Court, undue means, fraud, and racism.

Plaintiff is also attaching a copy of the defendant (Respondent's) Brief in opposition to the United States Supreme Court. The Administrative memos will prove JOHN H. LARSON was lying to the Court. If JOHN LARSON was not lying to the Court, he should be willing to submit an affidavit to the Court saying all charges against plaintiff stated in his Brief to the United States Supreme Court are true.

Plaintiff is also attaching a copy (picture) of plaintiff's

stomach. Plaintiff had complications after surgery and before surgery, causing plaintiff to lose eleven pints of blood. Plaintiff also had a colostomy temporarily.

CONSTITUTIONAL LAW

D.C. Conn. 1976

Though plaintiff property interest in salary payments being withheld turned on state law, he was being deprived of "property interest," and it was thus necessary in determining his claim of violation of procedural due process to which he was entitled, despite contention that plaintiff would be deemed as matter of state law to have voluntarily relinquished his position.

Stolberg v. Caldwell, 423 F. Supp. 1295

D.C. Del. 1979

Due process required that employee, who was discharged from his position as school fireman custodian, have an opportunity to present his side of case in a manner which would permit decision-maker to weigh both sides.

U.S.C.A. Cons. Amend. 14.

Hawkins v. Board of Public Ed., in **Wilmington**, 468 F. Supp. 201.

As regard discharge of Board of Education employee who had constitutionally protected property interest in his continued employment, post-termination hearing by Board of Education would not comport with due process.

U.S.C. Const. Amend 14.

D.C. Del. 1976

Under circumstances which indicated as essentially ex parte proceeding, tenured college (teacher) associate professor was not accorded the pretermination procedural due process which he was entitled, and thus reinstatement with back pay was required. **USCA Constitution, Amendments V-XIV, Anapol v. University of Delaware**, 412 F. Supp 675.

The question has to be asked, can the States Courts of California and the Los Angeles Administrative Code (Section 33) with impunity deny an aggrieved person his constitutional mandated remedy of due process, fair play and full and fair opportunity to litigate a federal question?

The California courts are not conforming to the U.S. Supreme Court and other federal courts precedents in protecting the Due Process and the property rights of litigant.

The following case is a good example to show that the California courts including the California Supreme Court are not conforming to Federal Standards to protect property rights.

San Diego Gas & Electric vs. City of San Diego, et al., 49 L W 4324 (1981)

The court states "As explained in Part 11, supra, the California courts have held that a City's exercise of its police power however arbitrary or excessive cannot as a matter of federal constitutional law constitute a "taking" within the meaning of Fifth Amendment. This holding contradicts clear precedents of this court. For example in last Term's Agins v. City Tiburon ----- U.S. ----- (1981)"

In 50 L W. 3121 (1981) the court states: "Due process requires some kind of a hearing before a state "finally" deprives a person of a property interest but, Justice Rehnquist wrote for the court, that hearing does not always have to precede the deprivation."

This Plaintiff was denied a hearing before or after the deprivation. (Civil Service Commission)

CONCLUSION

Judgment should be granted in favor of plaintiff JIMMIE ALEXANDER, with damages, reasonable attorneys fees, and punitive damages of $7,500,000.00.

Plaintiff hopes that all legal decisions are decided by this Court.

Some of the additional expense to be reimbursed by defendant, medical expense, dental expense, interest lost on retirement money, and interest lost on $100.00 per month to the Credit Union Savings. Reimbursed for additional income tax due to lump sum payment.

Reinstate Appellant to his job classification, together with restoration of all wages and benefits lost from July 1, 1977, to the date of reinstatement.

Declaration that Section 33 of the Administrative Code is unconstitutional because the ordinance violates a person's due process rights and property rights.

DATED: April 30, 1984.

Respectfully submitted,

JIMMIE ALEXANDER

Appellant/Plaintiff

Appellant/Plaintiff

In Propria Persona

STATEMENT OF RELATED CASES

Pursuant to Rules of the United States Supreme Court, Appellant knows of no cases that are related to this appeal which are now pending before this court.

DATED: May , 1984.

Jimmie Alexander
In Propria Persona

FILED
FEB 10 1984
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JIMMIE ALEXANDER,

Plaintiff-Appellant,
CA No. 82-6026

v.

DC No. CV 82-3834 Kn
(Central California)

LOS ANGELES COUNTY and
LOS ANGELES COUNTY CIVIL
SERVICE COMMISSION,

ORDER

Defendants-Appellees.

Before: FARRIS and REINHARDT, Circuit Judges, and MUECKE,* District Judge.

*The Honorable C. A. Muecke, Chief United States District Judge for the District of Arizona, sitting by designation.

A majority of the panel in the above case has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for an en banc hearing, and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

FILED
NOV 3 1983
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JIMMIE ALEXANDER,
Plaintiff-Appellant,

CA No. 82-6026

DC No. CV 82-3834 Kn

v.

LOS ANGELES COUNTY AND
LOS ANGELES COUNTY CIVIL
SERVICE COMMISSION,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
David V. Kenyon, District Judge, Presiding
Argued and submitted October 6, 1983

Before: FARRIS and REINHARDT, Circuit Judges, and
MUECKE,* District Judge.

Alexander brought an action in federal district court claiming that he was discharged from his position as a civil service employee on the basis of his race in violation of Title VII, and that the absence of a hearing prior to his discharge violated due process. The district court dismissed his complaint on collateral estoppel grounds, and Alexander appealed. We affirm the district court's dismissal.

*The Honorable C. A. Muecke, Chief United States District Judge for the District of Arizona, sitting by designation.

The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, foregoing publication in the **Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit.

Alexander called in sick with a stomach illness on July 5, 1977. During the next two months he made no response to his employer's repeated requests for medical verification of his illness. On September 6, 1977 his personal officer advised him that he was deemed to have impliedly resigned his position, but that he could request reinstatement within twenty days. Alexander's untimely request for reinstatement was rejected because he refused to explain his reasons for not obtaining the requested medical verification.

After receiving evidence and hearing argument, a California trial court held that he was not discharged but that he instead had impliedly resigned from his position. Alexander's appeal was affirmed. This finding defeats Alexander's claims. The procedural safeguards required by

due process are not applicable when the plaintiff, by his own acts, resigns. Further, since Alexander was held to have resigned on the basis of his own inaction, he could not validly claim to have been wrongfully discharged. There was a full and fair opportunity to litigate the issues in state court. Alexander, now a **pro se** appellant, was initially represented by counsel before the County's Civil Service Commission,the California Superior Court and the California Court of Appeals.

We are bound by the doctrine of collateral estoppel which precludes relitigation of issues in federal court that have been fully and fairly litigated in state court. **Kremer v. Chemical Construction Corp.**, 456 U.S. 461 (1982).

Affirmed.

FILED
FEB 10 1984
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JIMMIE ALEXANDER,

Plaintiff-Appellant,

v.

LOS ANGELES COUNTY and
LOS ANGELES COUNTY CIVIL
SERVICE COMMISSION,

Defendants-Appellees.

CA No. 82-6026

DC No. CV 82-3834 Kn
(Central California)

ORDER

Before: FARRIS and REINHARDT, Circuit Judges, and MUECKE,* District Judge.

A majority of the panel in the above case has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

* The Honorable C. A. Muecke, Chief United States District Judge for the District of Arizona, sitting by designation.

The full court has been advised of the suggestion for an en banc hearing, and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

FILED
OCT 8 1982
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY
ENTERED
OCT 12 1982

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JIMMIE ALEXANDER,
Plaintiff,

NO. CV 82-3834

v.

ORDER

LOS ANGELES COUNTY and
LOS ANGELES COUNTY CIVIL
SERVICE COMMISSION,
Defendants.

The Court, having heard argument from counsel for defendant and plaintiff appearing in pro se on September 13, 1982, with respect to defendant's motion to dismiss pursuant to F.R.Civ.P. 12(b)(6) and for costs, expenses and

attorney's fees pursuant to 28 U.S.C. §1927, and having considered the points and authorities and exhibits filed therewith, finds that:

Plaitiff is collaterally estopped from contending that he was terminated because of his race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e **et seq.** and that Section 33 of the Los Angeles County Administrative Code is unconstitutional because it does not provide a hearing as a matter of right in violation of his due process rights.

Buth the state Superior and Appellate Courts found that Plaintiff was not discharged but instead impliedly resigned his position. A hearing was denied by the California Supreme Court on January 30, 1982. A petition for certiorari was denied by the United States Supreme Court on June 16, 1980 (447 U.S. 924), and rehearing denied on September 17, 1982 (448 U.S. 918). Plaintiff's petition to the state Superior Court to vacate its prior judgment was denied on May 12, 1982 and affirmed on appeal. The California Supreme Court denied a hearing on July 22, 1982.

Plaintiff's reliance on **Skelly v. State Personnel Board**, 15 Cal. 3d 194 (1975) for the contention that he was entitled to a hearing as a matter of right is misplaced. **Skelly** held that because a permanent state employee has a property interest in the continuation of his employment, he is entitled to the benefit of certain procedural safeguards prior to his disciplinary removal. Since Plaintiff impliedly resigned his position and was not discharged, he is

not entitled to a hearing as a matter of right. **See e. g., Baker v. Wadsworth**, 6 Cal.App.3d 253 (1970).

Plaintiff's complaint is therefore dismissed with prejudice.

Defendant's request for attorney's fees, cost, and expenses pursuant to 28 U.S.C. §1927 is denied. Although Plaintiff has vigorously pursued this matter, the court does not believe that the complaint was filed in bad faith.

DATED: October _____, 1982.

DAVID V. KENYON
United States District Judge

GENERAL FIELD APPRAISER INSTRUCTIONS

The following instructions are designed to guide the appraiser working in the field. To the degree that personnel regulations are complex and frequently changed, it may be necessary to consult your supervisor and/or refer to the office copy of Administrative Memoranda issued by Administrative Services.

1. WORKING HOURS

Working day

1.1 Working hours are from 8:00 a. m. to 4:30 p. m. Monday through Friday except when assigned to counter duty in the main office, in which case working hours are from 8:00 a. m. to 5:00 p. m.

2. ABSENCE DUE TO ILLNESS

Reporting sick

2.1 If you cannot report to work because of illness notify your regional office time clerk before 8:30 a. m.

Reporting return to work

2.2 When you return to work after an illness notify your regional office time clerk before 8:30 that morning.

Do not use for industrial accidents

2.3 Do **not** have the time clerk report you as "sick" if your absence is due to an industrial accident. See paragraph 11.

Do not use for personal business

2.4 Sick leave may not be used for personal business, family illness, family doctor appointments or for any reason other than your own illness. Only the three days of paid personal leave may be used for these purposes. See paragraph 3.

3. PAID PERSONAL LEAVE

Three days per year

3.1 Three of the total 12 sick days per calendar year may be used as paid leave for personal reasons, such as personal emergencies or religious holidays. Not more than three days in any calendar year may be used for this purpose. Any unused portion of these three days is carried forward as sick leave.

COUNTY OF LOS ANGELES
OFFICE OF ASSESSOR
300 W. Temple Street
Los Angeles, California 90012

Philip E. Watson
Assessor

February 26, 1974

J. S. Felton, M. D.
Director
Occupational Health Service
County of Los Angeles
Department of Personnel
222 North Grand Avenue -- Room B-50
Los Angeles, California 90012

Dear Dr. Felton:

Our employee Jimmie Alexander , holding the position Appraiser I, is being referred to the Occupational Health Service for medical re-evaluation for the following reason(s):
Mr. Jimmie Alexander has been out continuously from August 13, 1973. He was accidentally shot and had surgery performed immediately. After surgery complications of infection, kept him on sick leave longer. He would like to return to work 3/8/74 with a doctors release.

The conclusions, on completion of the medical re-evaluation, should be forwarded in writing to Assessor's Personnel Office, Room 346, Hall of Administration. If there are any questions, please call me at the number below.

Very truly yours,

PHILIP E. WATSON
Assessor

Alfred F. Muir
Personnel Director
Telephone 974-3161

AFM:MS:

ADMINISTRATIVE MEMORANDUM

NUMBER.....7547
EFFECTIVE DATE.....7-23-75
ORIGINAL ISSUE DATE.....7-23-75
SUBJECT.....Medical Re-Evaluations and Return to Work Following Extended Absences Due to Illness

TO: Divisional Management and Supervision

FROM: Administrative Services

This memo summarizes and formalizes the procedures that have been developed and applied during the past year in connection with the above subject. The primary purpose for these procedures is to ensure that employees are physically able to perform their duties upon return from extended absences due to illness. Secondarily, it provides control to ensure that sick leave is being properly applied in accordance with our responsibilities under the Salary Ordinance. The authority for medical re-evaluation and illness-absence reviews is the Administrative Code (Sec. 78.07) and the Civil Service Rules (Rule 10.08)

1. The Personnel Division will develop a listing of employees who have been out 8 working days or more due to illness.
2. On the 8th working day of an employee absence, the Personnel Division will contact the Divisional Personnel Clerk or Regional Office Timekeeper to determine: (a) the nature of the illness; and (b) the date the employee expects to be released by his doctor to return to work.
3. The supervisor should be making regular checks from the start of the absence as to how the employee is doing, and whether there has been a change in the expected date to return to work. The employee will be advised in writing by the Personnel Division that if the absence continues for 10 working days or longer, he cannot return to work until he obtains **a written release from his doctor**.
4. Depending upon the nature and duration of the illness, the employee may be (a) returned to work immediately on the basis of the letter received from his doctor; (b) re-evaluated by OHS merely on the basis of his doctor's letter and the medical records obtained; or (c) required to have a full medical re-evaluation involving being seen by the OHS physician.
5. Immeiately following review, the Personnel Division will communicate the results to the Division and the employee.

COUNTY OF LOS ANGELES
OFFICE OF ASSESSOR
500 W. Temple Street
Los Angeles, California 90012
PHILIP E. WATSON
ASSESSOR

July 15, 1977

Mr. Jimmie Alexander
284 E. 43rd Pl.
Los Angeles, California 90011

Dear Mr. Alexander:
Your division has informed me that you have been absent due to illness since **7/5/77**. Section 78.07 of the Administrative Code states that employees absent due to illness for more than thirty (30) consecutive working days must be medically re-evaluated before returning to work.
Please complete the following enclosed forms: "Authorization to Release Confidential Information" and "Sources of Requested Medical Information." The enclosed "Physician's Certificate" must be filled out by your doctor (the reverse side of this form was completed by your immediate supervisor). All three forms must be mailed as soon as possible to:
Director, Occupational Health Service
One Bunker Hill Building
601 West Fifth Street, Fifth Floor
Los Angeles, CA 90071

Without the above information, Occupational Health Service will not be able to conduct your medical re-evaluation. You must see Occupational Health Service at the above address on a regular County work day between 8:00 a.m. and 3:00 p.m. before you report to work. We will notify you if your condition does not warrant your being seen by a County physician. Enclosed is a parking permit for your convenience.

Upon completion of youre re-evaluation, you will receive a "clearance to return to work" slip which must be presented to us before you are permitted to return to duty. If you work in a regional office, have your Supervisor call our office at 974-3161 to verify your release to return to work. In addition, please call our office to advise us of your expected date of release from your doctor. We will answer any questions you may have regarding this procedure. Follow these instructions so you will not be forced to lose additional time from work. We are all genuinely interested in maintaining your good health.

Very truly yours,
PHILIP E. WATSON
Assessor

Alfred F. Muir
Personnel Officer

AFM:lr
Enclosures

Sec. 78.06. (9740 3-14-69) REPEALED.

Sec. 78.07. (9740 f3-14-69) MEDICAL RE-EVALUATION. Any employee upon return from extended sick leave, or at such time that the Department Head believes that the employee may not be physically able to perform the duties of his position may be referred by the appointing officer to the Director of Personnel for a medical re-evaluation consisting of a medical examination and/or review of medical records as appropriate. The Director of Personnel shall report his findings and recommendations to the appointing officer. If the Director of Personnel determines that return to normal duties by the employees involved would be potentially harmful to himself or others, the appointing officer shall be so notified and shall take whatever measures may be deemed necessary to prevent the employee from being placed in such a work situation and if appropriate, to seek rehabilitation, retraining and reassignment of the employee.

The appointing officer shall notify the Director of Personnel when any employee under his jurisdiction has taken thirty (30) working days of sick leave within any 12-month period and shall refer such employee for medical re-evaluation.

Whenever necessary, the Director of Personnel shall establish follow-up examinations to evaluate an employee's medical adjustment.

Sec. 78.09. (9246 f1-13-67) MEDICAL FACILITIES AVAILABLE. The Director of Personnel shall prepare and maintain a register for all County departments and public entities listing the physicians, hospitals, and medical facilities to be used by these departments and public entities for the purpose of furnishing first aid and caring for employees involved in vehicular and industrial accidents.

Sec. 79. DEPARTMENTS TO PERFORM WORK FOR OTHER DEPARTMENTS. One department may secure the services of another department. Any request for the services of another department shall be made only by the head of the department desiring the work and shall be directed to the head of the department requested, who shall allow the request if the work can be done by his department without detriment to its own work.

COUNTY OF LOS ANGELES
OFFICE OF ASSESSOR
500 W. Temple Street
Los Angeles, California 90012
August 30, 1977

PHILIP E. WATSON
ASSESSOR

Mr. Jimmie Alexander
284 East 43rd Place
Los Angeles, California 90011

Dear Mr. Alexander:

You have not reported to work since Friday, July 1, 1977. You have been out due to alleged "stomach" problems from July 5, 1977 to the present.

In our letter dated August 17, 1977 we requested you have your doctor provide us with medical verification of your illness by August 23, 1977. Copy of letter attached. You did not comply with our request.

From August 24, 1977 you are being carried on the payroll as unauthorized absence without pay. Copy of August 25, 1977 letter attached.

We wish to advise you that Administrative Code Section 33 provides that an employee who has been absent without authorization for more than three consecutive regular working days shall be deemed to have resigned his position. We want you to be fully informed of this fact so that you will not intentionally remove yourself from County employment.

If you do not provide us with medical verification of your absence by Tuesday, September 6, 1977, you will be deemed to have resigned your position. If for any reason you cannot provide us with medical verification, you must obtain authorization to be absent.

Please call me at 974-3161 if you have any questions.

Very truly yours,

PHILIP E. WATSON
Assessor

Alfred F. Muir
Personnel Officer

cc: M. Frishman
G. Reel
C. Peet

On the County Assessor's personnel officer's letter, dated August 30, 1977, he states if you do not provide us with medical verification of your absence by Tuesday, September 6, 1977, you will be deemed to have resigned your position.

He also stated "Please call if you have any questions". I did not have any questions because the verification was mailed to Occupational Health Services August 29, 1977. I sent it certified[1] mail and it was received September 6, 1977 (NOTE: September 5, 1977 was a holiday). So this complied with his request (See copy of the date and the person that signed the card)

Please look in the upper right hand corner of Appendix "D" -- you will see the following statement:

NOT TO BE PRESENTED
TO THE
PERSONNEL OFFICER
NOR TO BECOME
A PART OF A
PERSONNEL FILE

My usual Doctor was on vacation, therefore, Dr. Reve was not familiar with my case. It took her an extended period of time to read some of the facts in my case. A photo copy of medical card will indicate the name of my doctor.

NOT TO BE PRESENTED
TO THE
PERSONNEL OFFICER
NOR TO BECOME
A PART OF A
PERSONNEL FILE

COUNTY OF LOS ANGELES
DEPARTMENT OF PERSONNEL
OCCUPATIONAL HEALTH SERVICE

PHYSICIAN'S CERTIFICATE

COPY

TO THE ATTENDING PHYSICIAN: Please fill in this form completely. If your patient does not bring or send it to us before his/her expected dte of return to work, he/she cannot resume regular work status or receive payment for further absence. Please send to the Physician named on the **reverse** side of this form. For persons having emotional or substance abuse problems, the treating professional should send this form to the Clinical Psychologist, whose name appears on the **reverse** side.

NAME OF PATIENT Jimmie Alexander DEPT. DEPT. ASSESSOR

SOCIAL SECURITY NO. 464-30-1713 BIRTHDATE: 3/24/23

1. I attended the patient for the present medical problem from 7 15 77 to present at intervals of 3 visits.
month/day/year

2. History: Abdominal pain increasing in severity since 7/15/77.

Findings (including ancillary test results): Patient in process of several studies for abdominal pain.

Diagnosis: R/O (rule out) pancreatitis, vs peptic ulcer disease, vs cholelithiasis.

3. Treatment (including surgical): Antacids present; further therapy pending.

4. Has the patient at any time during your attendance for this medical problem, been incapable of performing his/her regular work? Yes X No

If "Yes", his/her disability extended from 7 15 77 to 9 29 77 inclusive. month/day/year
month/day/year

5. Please give the **approximate date** on which the patient will be well enough to resume his/her regular or customary work without danger to himself/herself or others. (**The attached Class Specification describes the position to which you are returning the patient.**) Please make

some estimate, no matter how much uncertainty still exists. This estimate can be revised or amended if necessary later; but if it is not given at all, the form must be considered incomplete, and processing revised or amended if necessary later; but it is is not given at all, the form must be considered incomplete, and processing will be delayed until this estimate is recorded. Answers such as "indefinite" or "don't know" will not suffice.

Estimate of Date of return to work: 9 29 77
month/day/year

6. Prognosis: Fair

I hereby certify that the above statements in my opinion truly describe the patient's disability (if any) and the estimated duration thereof, and that I am a Internal Medicine licensed to practice by the State of California.

(Type of Physician)

BARBARA REVE S/BARBARA REVE

Print or type Physician's name

Signature of attending physician

Kaiser Hospital

1505 Edgemont 667-4821

Address Telephone No.

63087 8/29/77

State License Number Date

COUNTY OF LOS ANGELES
OFFICE OF ASSESSOR
500 W. Temple Street
Los Angeles, California 90012
September 6, 1977

PHILIP E. WATSON
assessor

Mr. Jimmie Alexander
284 East 43rd Place
Los A[illegible]les, California 90011

month/day/year

Dear Mr. A[illegible]nder:

This letter is to no[illegible] you that you were deemed to have resigned from County service effective July 1, 1977 under Section 33 of the Administrative Code of the County of Los Angeles.

You have been absent continuously since July 5, 1977 due to alleged illness. In our letters to you dated August 17, 1977, August 25, 1977 and August 30, 1977, we requested medical verification of your absences or you would be considered absent without authorization. You did not respond to any of our letters.

When a County employee is absent or fails to perform regularly assigned duties without prior authorization for more than three consecutive regular working days, he is

deemed to have resigned as of the time he last performed any duties of his position. This policy is established by Section 33 of the Administrative Code of Los Angeles County. The Code further provides that the Department may grant a reinstatement from the effective date of the resignation. A reinstatement may be granted if there was good cause for the absence or failure to perform duties beyond the employee's control.

If you desire to return to County service, you must direct a request for reinstatement in writing to Mr. Mort Frishman, Director of Real Property Appraisals, 500 W. Temple Street, Room 250, Los Angeles, California 90012, within twenty calendar days from the date of this letter. Your request for reinstatement must contain specific facts regarding your absence and state the reasons you did not respond to our letters to you.

Please call me at (213) 974-3161 if you have any questions.

Very truly yours,

PHILIP E. WATSON
Assessor

Alfred F. Muir
Personnel Officer

EX. No. X

Filed

J. Alexander P.F.

To: Ron Adler, Department of Personnel
Selection, Standards and Appeals
Room 464 Hall of Administration

From: Al Muir, Assessor's Personnel

Date: October 19, 1977

Subject: JIMMY ALEXANDER

Following is information you requested at our meeting of 10-17-77:

1. A check with Mr. Alexander's supervisors reveals that nothing in writing was given to him after the September 17th meeting as to how his subsequent absences were to be reported. It was merely agreed to verally that Jimmy was to report his absences in the future to his Supervising Senior Appraiser, and that absences on account of illness would require verification.
2. On 4-1-77, Jimmy was transferred from Long Beach to our Culver City Regional Office. No special reporting instruction were given to him at this Region. Like all other appraisers, he was required to report his absences to the Regional Office's Time Clerk (see enclosed Real Property Handbook item).

3. In connection with his last absence, Jimmy's supervisor made many phone calls but was only able to reach him on 3 occasions. The supervisor told Jimmy that since it was so difficult to get in touch with him, that he, Jimmy, check in with him, the supervisor, on a weekly basis. Jimmy never complied with this request.
4. Jimmy's having furnished OHS with medical reports on 9-6-77, was belated compliance with our standard procedure of having employees who are out ill 30 days or more provide such information to OHS prior to their return. (See enclosed samples of this correspondence that was sent to Jimmy on 7-15-77).
5. To this date, Jimmy has never complied with any of the Department's many written requests (8-17-77; 8-25-77; 8-30-77; 9-6-77) to provide information to the Department as to his absence and the consequences that would result if he failed to comply.

Please call me on 43161 if additional information is required.

AM:lr

Enc.

COUNTY OF LOS ANGELES

OFFICE OF THE DIRECTOR OF PERSONNEL

222 North Grand Avenue

Los Angeles, California 90012

Harry L. Hufford

CHIEF ADMINISTRATIVE OFFICER

AND DIRECTOR OF PERSONNEL

974-1101

HERBERT KAPLAN

CHIEF DEPUTY DIRECTOR, PERSONNEL

974-2406

MEMBERS OF THE BOARD

EDMUND D. EDELMAN, CHAIRMAN

PETER F. SCHABARUM

KENNETH HAHN

BAXTER WARD

JAMES A. HAYES

CIVIL SERVICE COMMISSION

LOUISE L. FRANKEL

ERNEST E. SANCHEZ

FRANK A. WORK

May 2, 1978

Mr. Charles C. Guidry
Attorney at Law
500 Carson Plaza Drive, Suite 110
Carson, California 90746

Dear Mr. Guidry:

RE: REQUEST FOR HEARING OF JIMMY ALEXANDER

The purpose of this letter is to confirm the telephone conversation you had with Mr. Robert Hartstein of my staff on April 27, 1978. In that conversation you and Mr. Hartstein reviewed the elements of a proposed settlement in this case, agreed upon by both the Department of the Assessor and your client. Also discussed were new demands from your client which now complicate that settlement.

As you requested during your conversation with Mr. Hartstein, the following outline delineates the provisions of the original proposed settlement. Also included in an analysis of your client's new demands and reasons why we are powerless to include them in the settlement. Attached to this letter is that part of the Salary Ordinance which governs part pay sick leave.

It has been agreed among all parties concerned that **Mr. Alexander's intention is to retire from County service; specifically, with a disability retirement.** The

department is prepared to demonstrate its support by re-considering the circumstances under which Mr. Alexander was separated from service and which form the basis for Mr. Alexander's appeal.

Contingent upon and as soon as Mr. Alexander files all necessary papers to initiate a disability retirement, the department will:

1. Reinstate Mr. Alexander for the purpose of drawing all benefits to which he would have been entitled had he not been separated from service.
2. **The reinstatement is understood not to be for the purpose of Mr. Alexander eventually returning to active service in the department.**

3. The department will provide Mr. Alexander with the following benefits:
   -7 days of accrued sick leave at 100% for the period 7/5/77 through 7/13/77.
   -56 days of accrued sick leave at 75% for the period 7/14/77 through 9/7/77.
   -91 days of accrued sick leave at 50% for the period 9/18/77 through 12/7/77.
   -20 days of accrued vacation for the period 12/8/77 through 12/31/77. (16 days used, 4 days carried over.)

Benefits beginning with the Calendar year 1978 are as follows:

-12 days of accrued sick leave at 100% for the period 1/1/78 through 1/18/78.

-56 days of accrued sick leave at 75% for the period 1/19/78 through 3/15/78.

-91 days of accrued sick leave at 50% for the period 3/16/78 through 5/14/78.

-20 days regular accrued vacation and 4 days deferred vacation from 1977 for the period 6/15/78 through 7/19/78.

Mr. Alexander will be entitled to restoration of his health insurance benefits retroactively to his date of separation.

4. Since disability retirements take in excess of six months to process, Mr. Alexander will file for a regular service retirement under 31725.7 of the Retirement Law 90 days after filing for his disability retirement. This will be after Mr. Alexander has exhausted his accumulated benefits and the earliest a regular retirement may be requested after filing for a disability retirement. The service becomes effective until a ruling is made on the request for disability retirement. **Failure to request a service retirement at the specified time will cause an immediate end to any outstanding benefits and result in immediate termination of Mr. Alexander.**

5. The decision of the Retirement Board on the acceptability of Mr. Alexander's request for disability retirement is independent of department influence. It's decision is binding. If the disability request is not granted, the service retirement will neither be affected or rescinded.

As a result of this proposed settlement, Mr. Alexander was to have provided a written withdrawal of his request to the Civil Service Commission for a hearing. We now find Mr. Alexander making new demands. The department is unable to consider the new demands since provisions of the County's Salary Ordinance preclude their being granted.

As you know, Mr. Alexander is demanding sick leave at 100% of pay for all of his sick time. This would put him in the position of drawing greater compensation from the department than he would have been eligible for had he never been separated from service. This request appears inappropriate and contrary to the spirit of the agreement which has been negotiated. Further, this additional demand is viewed as a withdrawal of good faith on the part of Mr. Alexander. The department will consider withdrawing its offer and going to the Civil Service Commission if acceptance of the original proposed settlement is not immediately forthcoming.

The Department of the Assessor and the Retirement Board have reviewed this letter and are in concurrence with its content.

If you have any questions, please contact Mr. Hartstein at 974-2614.

Very truly yours,

HARRY L. HUFFORD
CAO/Director of Personnel

ELLIOT MARCUS, Chief
Administrative Services Division

yw

Enclusure

cc: Al Muir
Elliot Marcus
Alice Natale

The defendant's attorneys John H. Larson, William F. Stewart, Joe Ben Hudgens and Halvor S. Melom should be willing to submit an affidavit to the court stating the Brief for Respondent in Opposition filed in the U.S. Supreme Court, The Finding of Facts and the Conclusion of Law filed in Superior Court of Los Angeles and defendant's reply Brief filed in Superior Court of Los Angeles represented the true facts of the case.

The complete Brief for Respondent in Opposition filed in The U.S. Supreme Court follows:

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979
No. 79-1714

JIMMIE ALEXANDER,

Petitioner and Appellant,

vs.

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

BRIEF FOR RESPONDENTS IN OPPOSITION

JOHN H. LARSON
County Counsel

WILLIAM F. STEWART, Chief
Labor Relations Division

JOE BEN HUDGENS, Principal
Deputy County Counsel

648 Hall of Administration
Los Angeles, California 90012
(213) 974-1850

Attorneys for Respondents

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IN THE
SUPREME COURT
OF THE UNITED STATES
October Term, 1979
No. _____

JIMMIE ALEXANDER,

Petitioner and Appellant,

vs.

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION, et al.,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION

JURISDICTION

As appellant challenges the constitutionality of a civil service rule of the County of Los Angeles, California, and claims that the rule violates his constitutional right to retain his County civil service employment, his petition for a writ of certiorari meets the literal requirements of paragraph (3) of Section 1257 of Title 28 of the United States Code. Respondent will attempt to demonstrate, however, that the quetions presented -- especially in view of the facts of the case -- are not of such substance or importance as to merit the granting of a discretionary hearing by this Honorable Court.

QUESTIONS PRESENTED

1. Is Section 33 of the Los Angeles County Administrative Code (County Ordinance No. 4099) unconstitutional, either generally or as applied to appellant?

2. Is there evidence that appellant was a victim of racial discrimination?

3. Has appellant been subjected to cruel or unusual punishment?

ORDINANCE INVOLVED

Section 33 of the Los Angeles County Administrative Code reads in full as follows:

"A county officer or employee resigns in any of the following ways:

"(a) A county officer or employee who without prior authorization is absent or fails to discharge his regularly assigned duties for either three (3) consecutive regular working days or for two (2) consecutive regularly scheduled on-duty shifts, whichever may be applicable, shall be deemed to have resigned effective as of the end of the day on which he last performed any of the duties of his position; provided, however, an officer or employee shall not be deemed to have so resigned if he resumes the performance of his regularly assigned duties at the commencement of his next regular working day or on-duty shift following the expiration of the aforementioned period of absence or failure to discharge duties.

"Within twenty (20) calendar days after the effective date of such resignation, any officer or employee who has resigned pursuant to this subsection (a) may file with his appointing officer a written request for reinstatement. The appointing officer may reinstate such officer or employee if such appointing officer finds that there is

good cause for the absence or failure to perform duties such as bona fide illness, injury, or similar circumstances beyond the control of the officer or employee, and that such officer or employee is ready and able to resume the discharge of his duties. In the event an individual is so reinstated, such reinstatement shall constitute a retroactive leave of absence.

"This subsection (a) does not apply to an elective officer or department head.

"(b) An elective officer or officer appointed by the Board may resign by resignation in writing to the Bard and filed with the Executive Officer-Clerk thereof. Such resignation shall be effective on the date designated therein.

"(c) Any other officer or employee may resign by tendering his resignation in writing to his appointing officer. Such resignation shall be effective on the date designated therein, and if no date is so designated it shall be effective immediately."

STATEMENT OF THE CASE

Appellant was employed in the office of the Los Angeles County Assessor as an Appraiser II. On July 5, 1977, he notified his regional office by telephone that he would not

be able to come to work that day because of a stomach illness. After that date, he did not again report to work or contact his employer to request further authorized absence.

On July 15, 1977, the personnel officer of the Assessor's office wrote to appellant, seeking to verify that his continued absence from duty was due to illness; to ascertain the date on which he might return to work; and to inform him of the need, upon his return to duty, to present a medical clearance from the Occupational Health Service of the County's Department of Personnel. Appellant admits receiving that letter, but he did not respond to it.

More than one month later, on August 17, 1977, the personnel officer, by certified mail, notified appellant that he would be deemed absent without leave on and after August 23, 1977, if he did not, by then, furnish the Assessor's office with a statement from his physician as to the nature of his illness and the date of his expected return to work. The letter also asked that a copy of that statement be sent to the Occupational Health Service for purposes of medical reevaluation in accordance with a County ordinance. Appellant denies receiving that letter.

Not having heard from appellant by August 25, 1977, the Assessor's personnel officer again wrote to him, this time by regular, as well as certified mail. The August 25 letter notified appellant that he was deemed absent without leave, and reiterated the previous request for a physician's statement in duplicate. Copies of prior correspondence were attached. Appellant does not deny those letters.

On August 30, 1977, the personnel officer again wrote to appellant, by both regular and certified mail, that if he did not submit a physician's statement by September 6, 1977, he would be deemed, under Section 33 of the Los Angeles County Administrative Code, to have impliedly resigned his employment. Copies of previous letters were again attached. Appellant must have received that correspondence, because he appears to have filed a physician's statement in early September with the Occupational Health Service, though not with the Assessor's office.

On September 6, 1977, still not having heard from appellant for the past two months, the personnel officer notified him by regular and certified mail, that he was deemed to have impliedly resigned; and that, in order to be reinstated as an employee of the Assessor, he would have to show good cause, within twenty days, for his unauthorized absence. Appellant apparently received that letter, but made no timely request to the Assessor's office for reinstatement.

After writing to both the County Counsel and respondent, requesting that each of them compel the Assessor to reinstate him as an employee, appellant finally, on October 31, 1977, requested a hearing before respondent on his implied resignation. At respondent's suggestion, he withdrew the request without prejudice, on December 21, 1977, to request reinstatement from the Assessor's office. He wrote to the Director of Real Property Appraisals asking to be reinstated, but offering no explanation for his unauthorized absence, his failure to answer correspondence or his late reinstatement request. When the Director

of Real Property Appraisals wrote back questioning these matters, appellant, through his attorney, responded refusing to provide any explanation and demanding that his request either be accepted or refused. It was refused on January 31, 1978.

On June 21, 1978, respondent denied appellant's request for a hearing.

The foregoing were the facts found by the California Superior Court in denying appellant's petition for a writ of mandamus on December 7, 1978.

The California Court of Appeal affirmed that decision on December 4, 1979; and the California Supreme Court denied appellant's petition for hearing on January 30, 1980.

ARGUMENT: REASONS FOR DENYING THE WRIT

Aside from appellant's own bare assertion, there is no evidence in the record to support his charge of racial discrimination.

Because this is a civil action, the constitutional prohibition of cruel and unusual punishment does not apply.

Appellant's remaining arguments attach the constitutionailty of Section 33 of the Los Angeles County Administrative Code (quoted above) both generally and as applied to himself. The two grounds of challenge are that the ordinance section allows permanent County employees'

jobs to be terminated without cause, and that it denies them a hearing.

Respondent submits that just cause for termination of employment is specified in the section, itself -- i.e., unauthorized absence or failure to perform duties for three consecutive days or two consecutive, regularly-scheduled work shifts. In appellant's case, the period of absence stretched to two months. No federal constitutional or statutory provision mandates that a government retain on its payroll employees who will not work or who have abandoned their jobs. If illness prevents them from working, it is only reasonable to expect them to communicate that information to their employer, as appellant was repeatedly urged to do.

As far as the right to a hearing is concerned, Section 33 also establishes a procedure for reinstatement within twenty days for good cause. Appellant, who refused to exhaust that procedure, fails to explain how any earlier "hearing" can be held when an employee is absent, incommunicado or both.

CONCLUSION

Because appellant's contentions are so utterly devoid of substance, they furnish no basis for granting his petition. Therefore, the writ sought should be denied.

Respectfully submitted,

JOHN H. LARSON
County Counsel

WILLIAM F. STEWART, Chief
Labor Relations Division

JOE BEN HUDGENS, Principal
Deputy County Counsel

Attorneys for Respondent

CASE NO. 82-6026

DC NO. CV 82-3834

IN THE UNITED STATES DISTRICT COURT OF APPEALS FOR THE NINTH CIRCUIT

JIMMIE ALEXANDER,

PLAINTIFF-APPELLANT

vs.

LOS ANGELES COUNTY, AND
LOS ANGELES COUNTY CIVIL
SERVICE COMMISSION

DEFENDANT-APPELLEES,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA DAVID V. KENYON, DISTRICT JUDGE, PRESIDING

APPELLANT'S PETITION FOR REHEARING EN BANC

JIMMIE ALEXANDER, PLAINTIFF
IN PRO PER
P. O. Box 44548
Los Angeles, CA 90044
(213) 758-7881

STATUTES AND AUTHORITIES

CASES

San Diego Gas & Electric v. City of San Diego et al., 49 L. W. 4324 (1981)

50 L.W. 3121 (1981)

Stolberg v. Caldwell, 423 F. Supp. 1295 (1976)

Hawkins v. Board of Public Ed., Wilmington, 468 F. Supp. 201

CONSTITUTIONAL LAW

Allen V. McCurry (1980) 66 L. 2d 308: 101 S. Ct. 441

Brown v. Felson (1979) 442 U.S. 127, 131, 60 L Ed 2d 767: 99 S. Ct. 2205.

Montana, et al. v. United States, 440-, 147-164. (1979)

Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982)

The Appeal court stated "we are bound by the doctrine of collateral estoppel which precludes relitigation of issues in federal courts that have been fully and fairly litigated in the state court. Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982)."

It is incredible that a U.S. Court of Appeal would state that this Plaintiff has received a full and fair opportunity to litigate. This Plaintiff has not had anything close to a full and fair opportunity in the state courts. The trial judge made his decision based on the lies told the court by Halvor S. Melom and John H. Larson, attorneys for the defendants. John H. Larson even lied to the U.S. Supreme Court. Plaintiff's exhibits will prove this.

Plaintiff has read the case cited by the court, Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982) This case seems to be essentially a case that say the same thing concerning cases that fall within the class of cases that have been **fully** and **fairly litigated** and **no violation** of **Due Process Clause** of the **Fourteenth Amendment**. Cases that fall in the above class can be met with a defense of collateral estoppel and, or res judicata.

This plaintiff has not had the minimum requirement of Due Process which mandates procedural safeguards against government deprivation of an individial property interest; protected property interests are not limited to ownership of real or personal property, but extend to an individual's legitimate claim of entitlement to an acquired

benefit. U.S.C., A. Const. Amend. 5.

Klein v. Califano, 586 F. 2d 250 (1978)

Collateral estoppel cannot legally be used against this plaintiff because of the following reasons:

1. Wrongful Termination
2. Termination was due to Racism
3. Plaintiff had a protected property interest and vested rights.
4. Plaintiff is contending that section 33 of the Administrative Code is unconstitutional. No state court nor no U.S. has ruled on the constitutionality of this Code that deprived me of my property rights and Due Process rights without a hearing. (Constitutional Law cases cited)
5. Plaintiff complied with the County assessor's office procedure when a person is out sick. (See exhibits)
6. Plaintiff has been able to locate Administrative memo to refute all of the allegations concerning implied resignation.
7. Fraud Undue means, malicious intent, and malicious Prosecution
8. Hearing in the Superior Court was essentially ex parte (defense side only)
9. Section 33 of the Administrative Code is a Code enacted to prevent strikes. (see attached exhibits)
10. Los Angeles Civil Service Commission denied a permanent County with 17 years of continuous service a hearing.

(A County employee with 17 years service denied a hearing and so far the courts are saying I have been

accorded my Due Process rights. I have to repeat, this is incredible.)

I am going to cite some excerpts from kremer v. Chemical Construction Corp., 456 U.S. 461 (1982)

The court states in footnote 21: "When the NYHRD summarily dismisses a complaint, the Appellate division must find that the petitioner's complaint lacks merit as a matter of law" Flah's Inc. v. Schneider, 71 A.D. 2d 993, 420 N. Y. S. 2d 283, 284, (1979). See also New York State Div. for Youth v. State Human Rights Appeal Board, 83 A.D. 2d 972, 973, 440 N.Y.S 2d 813, 814 (1981)

In order to sustain a dismissal of a complaint before the complainant has had his opportunito to present his case in a formal manner, it must appear virtually as a matter of law that the complaint lacks merit."

(When a complainant has a "full opportunity to present his evidence and exhibits, under oath if he do request" the presence of a "rational basis in the record" for that decision will suffice.)

"The State must, however, satisfy the applicable requirement of the Due Process Clause. A state may not grant preclusive effect in its own courts to a constitutionally infirm and other state and federal courts are not required to accord full-faith-and credit to such a judgment."

"The Court's decision enforcing the full-faith-and credit Clause of the constitution, Article IV, Sec. 1 also suggest that what a full and fair opportunity to litigate entails is the procedural requirement of due process."

"We have previously recognized that the judicially created doctrine of collateral estoppel does not apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" to litigate the claim or issue, Allen v. McCurry, 449 U.S., at 95; Montana v. United States, 440 U.S. 147, 153 (1979); Blonder-Tonque Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 328-329." **Redetermination of issues is warranted if there is reason to doubt the quality extensiveness, or fairness of the procedure followed in the prior litigation.**" Montana v. United States, 440 U.S. at 164 n. 11. Cf. Gibson v. Berryhill, 411 U.S. 564 (1973) "Our previous have not specified the source or defined the content of the requirement that the first adjudication offer a full and fair opportunity to litigate."

This plaintiff used the case cited by the court to state that plaintiff is prevented from litigating this case because of collateral estoppel, of course the above excerpts help to prove that plaintiff is not prevented from litigating this case because plaintiff has not had minimum due process rights, plaintiff's fifth and fourteenth amendment rights have been violated.

This plaintiff is not a criminal nor is this plaintiff a foreigner, therefore, this plaintiff has a right to expect justice and fair play according to constitutional law. This plaintiff is Black American entitled to the same Due process rights as any White litigant. This plaintiff is also a World War II veteran.

If this plaintiff had been white this case probably never would have been litigated higher than the Superior Court

if that high before the litigant was reinstated. A good example about double standards used by the Civil Service and the state courts, the County Probation Officer Kirkpatrick was fired by the Board of Supervisors. He had a Civil Service Commission hearing (reminder this plaintiff did not have a hearing) Superior Court judge reinstated Kirkpatrick to his position. This man was fired because they said he was incompetent. (I repeat, this case is incredible.)

I think the members of the Ninth U.S. should put yourselves in Superior Court George M. Dell's courtroom and assume you are hearing this case then consider would you say a litigant had not done what he was supposed to do just because the Medical Verification form was sent to Occupational Health, the custodian for all medical records of County employees (it stated on the form not to be sent to personnel officer nor become a part of the personned record.)

Plaintiff hopes that Judge Farris and other members of the court did not judge my case like Judge Farris was prejudging this plaintiff.

The defendant attorney mentioned that collateral estoppel preclude any additional litigation or something to this effect, Judge Farris stated in effect here you are talking about collateral estoppel and Mr. Alexander does not know what you are talking about, what you mean. This plaintiff was shocked to hear a U.S. Appeal Court judge state what this plaintiff understood, without asking the plaintiff if he understood the meaning of collateral estoppel. If Judge Farris and other members of the panel reads

this plaintiff brief they will understand I know the meaning of collateral estoppel, so you see some people know legal terminology that are not attorneys.

I think the court should be reminded that even criminals and people in prisons have due process rights. This litigant is using the legal process in a legal way to correct an injustice done to this litigant. The judicial system should do everything possible to see that people that are using the system in a legal way is accorded justice, fair play and a full opportunity to litigate. Some people use illegal means to try to correct an injustice.

The court stated in its Memorandum "Alexander called in sick a stomach illness on July 5, 1977. During the next two months he made no responses to his employer's (the court is referring to Racist personnel officer) repeated requests for medical verification of his illness. On September 6, 1977 his personnel officer advised him that he was deemed to have impliedly resigned his position, but that he could request reinstatement within twenty days. (This plaintiff is baffled the reason the writer of this Memorandum is attempting to distort the facts of the case, the court is aware of the fact that Occupational Health Services received medical verification (Physician's Certificate) July 6, 1977. Los Angeles County agrees that they received the verification, now here we come to believe it or not, Judge Dell said the verification should have been sent to the personnel officer in order to meet their demand that it be received by July 6, 1977. I repeat Occupational Health Services is the custodian of all Medical Records. I called

Occupational Health Services, I talked to Mrs. Briggs at telephone number (213) 974-1702. She stated the Privacy Act is the Act that Medical Facilities operate under. Mrs. Briggs stated I followed the correct procedure by sending the verification to them. Mrs. Briggs also stated medical records are never sent by them to a personnel officer. She states the only thing that is sent to the personnel officer is a statement saying a person can return to work and if under certain restrictions, Mrs. Briggs could not understand how there could be any question about the procedure.

I repeat this for some members of the court that have not read plaintiff's Brief and exhibits. This plaintiff was a victim of violent robbery and I was shot by the robber which did internal damage and while in the hospital complications developed. (1973). In 1974 this plaintiff had a heart attack while on the job as a real estate appraiser. So when plaintiff was out sick in 1977 my stomach was just part of the problem. I am going to attach a picture of the plaintiff's stomach.

This plaintiff knows that I have supplied sufficient information to the court for a favorable decision.

said that plaintiff is collaterally estopped form contending that plaintiff was terminated because of racism in violation of Title VII of Civil Rights Act of 1964; 42 U.S.C. Section 2000, et seq., and Section 33 of the Los Angeles County Administrative Code is unconstitutional because it does not provide a hearing as a matter of right in violation of Appellant's due process rights.

COLLATERAL ESTOPPEL is not intended to prevent a person from litigating in the Federal court when the litigant has not had a "full and fair opportunity" to litigate that issue in the earlier case.

Montana v. United States, supra, at 153;
Blonder-Tonque Laboratories, Inc. v. University of Illinois Foundation, supra, at 328-329.
Montana, et al. v. United States, 440-, 147-164.
Brown v. Felson (1979) 442 U.S. 127, 131; 60 L.Ed. 2d 767; 99 S.Ct. 2205.
Allen v. McCurry (1980) 66 L.Ed. 2d 308; 101 S.Ct. 441.

This plaintiff has documents to prove that he has not had a "full and fair opportunity" to litigate the issues in the earlier case. A person cannot receive a "full and fair opportunity" to litigate when the judgment was based on fraud, undue means, racism, violation of the Codes of Judicial Conduct, violation of rules of professional conduct C.R.C. Rule 7-105, and ex parte hearing in Judge Dell's court (Judgment granted in Judge Dell's court).

Plaintiff has documents to prove that County Counsel John H. Larson (defendant's attorney) and Halvor S. Melom lied.

Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action

involving a part to the first case.

Montana v. United States, 440 U.S. 147, 153

> But one general limitation the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" to litigate that issue in the earlier case.

Montana v. U.S., supra, at 153;

Blonder-Tonque Laboratories, Inc. v. University of Illinois Foundation, at 328-329.

This plaintiff did not have a "full and fair opportunity to litigate the issue and the question of the constitutionality of Section 33 of the Administrative Code.

Contrary to the suggestion of the dissent, post, at 112-113, our decision today does not fashion any new, more stringent doctrine of collateral estoppel, nor does it hold that collateral estoppel effect of a state court decision turns on the single factor of whether the State gave Federal claimant a "full and fair opportunity" to litigate a Federal question. (Note this plaintiff was not given a full and fair opportunity to litigate a federal question.) Our decision does not "fashion" any doctrine of collateral estoppel at all. Rather it construes Section 1983 to determine whether the conventional doctrine of collateral estoppel applies to the case at hand.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any

State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S. Section 1983

Section 33 of the Administrative Code violates plaintiff's property rights and due process rights. Fifth and Fourteenth Amendment violation.

In reviewing the legislative history of . . .Section 1983 in **Monroe vs. Pape**, supra, the Court inferred that Congress had intended a federal remedy in three circumstances: where state substantive law was facially unconstitutional, where the state procedure law was inadequate to allow full litigation of a constitutional claim, and state procedure law, though adequate in theory, was inadequate in practice. 365. . ., at 173-174. In short, the federal courts could step in where the state courts were unable or iunwilling to protect federal rights. (This statement represents what occurred in plaintiff's case). Id. at 176. This understanding of Section 1983 might well support an exception to res judicata and collateral estoppel where state law did not provide fair procedure for the litigation of constitutional claims, or where the state court failed to even acknowledge the existence of the constitutional

principle on which a litigant based his claim.

[The preceding statement represents what happened to plaintiff.]

The following are some excerpts from **Montana v. United States**, 440 U.S. 147-164 (1979):

> To determine the appropriate application of collateral estoppel in the instant case necessitates three further inquiries: first, whether the issues presented by this litigation are substantially the same as those resolved against the United States in kiewit 1; second, whether controlling facts or legal principles have changed significantly since the state-court judgment; and finally, whether other special circumstances warrant an exception to the normal rules of preclusion. (The court is in error in using collateral estoppel against plaintiff.)
>
> It is of course true that changes in facts essential to a judgment will render collateral estoppel inapplicable in a subsequent action raising the same issues. See e.g. **United States v. Certain Land at Irving Place & 16th Street**, 415 F. 2d 265, 269; (CA2 1969);
>
> **Metcalf v. Commissioner**, 343 F.2d (CA 1 1965);
>
> **Alexander v. Commissioner**, 224 F.2d 788, 792-793 (CA5 1955).

[The lies that John H. Larson and Halvor S. Melom used to obtain the judgment in Judge Dell's Court can now be refuted

LOS ANGELES COUNTY LETTERGRAM

TO	Charles Pett	FROM	Tom Carlson

OCT 19 1977

Subject: Jim Alexander

Date 8/24/77 No.

I talked with Jim today at 9AM by Radio. He said: 1) He did not know he was to report to Personnel by 8/25/77 2) He had received only one letter from Personnel dated July 15, 1977 3) He did not know when his health would permit returning to work 4) He would call Al Miller. I told him his Rx had shifted beginning 8/24/77; he should get his doctors to report currently the diagnosis of his illness and the daily and type of treatment he would need for sick time pit. I suggested he call Al Miller himself.

BEST AVAILABLE COPY

Jimmie July 29, 1977

Here's a special
"cheer-up" note
And what it's meant to do
Is pay a little call
and say,
"Hello, and how are you?"
We miss you and
hope you will be back
with us real soon.
Best wishes from
Reg 9, Reg 26 and clerks

4909 Overland
Culver City, Calif
90230

3

Jimmie Alexander
234 East 43rd Place
Los Angeles, California

BEST AVAILABLE COPY

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 4075 North Agate Street, Riverside, California 92509.

On May 1984, I served the within PETITION FOR WRIT OF CERTIORARI on the interested parties in said action, by placing a true copy in a sealed envelope, with postage thereon fully prepaid, in the United States mail at San Bernardino, California, addressed as follows:

LOS ANGELES COUNTY COUNSEL
500 W. Temple Street
Los Angeles, California 90012

I certify under penalty of perjury that the foregoing is a true and correct.

EXECUTED on May 1984, at Riverside, California.

_____

JACK GALLAGHER